

HERBERT CILCH

IBLA 83-343

Decided May 24, 1983

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 120854 through CA MC 120857.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owners of unpatented lode or placer mining claims located after Oct. 21, 1976, must file in the proper BLM office within 90 days after the location of such claims, a copy of the official record of the notice of location or certificate of location. Failure to file such instruments timely is deemed conclusively to constitute an abandonment of the mining claims by the owner, and they are properly declared void.

APPEARANCES: Herbert Cilch, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Herbert Cilch appeals the California State Office, Bureau of Land Management (BLM), decision of January 10, 1983, which declared the unpatented Santa Fe Nos. 1 through 4 lode mining claims, CA MC 120854 through CA MC 120857, abandoned and void because the notices of location were not filed with BLM within 90 days after location, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The claims were located September 30, 1982, and were recorded in

San Diego County, California, the same day. Copies of the location notices were received by BLM January 3, 1983, after the 90-day period prescribed by FLPMA had expired.

Appellant does not point to any error in the BLM decision, but states that he had mailed the location notices from San Diego and delivery was not accomplished until 7 days later on January 3, 1983. He suggests the press of holiday mail should be reason to extend the deadline for receiving notices of location, even as it has been extended for annual proofs of labor.

[1] Section 314(b) of FLPMA requires the owner of an unpatented mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the proper BLM office within 90 days after the date of location, section 314(c) provides that failure to file the instruments required by section 314(b) within the prescribed time limits shall be deemed conclusively to constitute an abandonment of the claim by the owner. The requirements of the statute and the consequences for noncompliance are restated in the regulations at 43 CFR 3833.1-2(b), and 3833.4(a). This Board has no authority to waive failure to comply with the statute. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Gail M. Frazier
Administrative Judge

